

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

MARC VEASEY, JANE HAMILTON,)
SERGIO DELEON, FLOYD J. CARRIER,)
ANNA BURNS, MICHAEL MONTEZ,)
PENNY POPE, OSCAR ORTIZ, KOBY)
OZIAS, JOHN MELLOR-CRUMLEY, PEGGY)
HERMAN, EVELYN BRICKNER, GORDON)
BENJAMIN, KEN GANDY, LEAGUE OF)
UNITED LATIN AMERICAN CITIZENS)
(LULAC), AND DALLAS COUNTY, TEXAS,)

Plaintiffs,

v.

RICK PERRY, Governor of Texas; and JOHN)
STEEN, Texas Secretary of State,)

Defendants.

UNITED STATES OF AMERICA,)

Plaintiffs,

TEXAS LEAGUE OF YOUNG VOTERS)
EDUCATION FUND, IMANI CLARK, AND)
MICHELLE BESSIAKE,)

Plaintiff-Intervenors,

TEXAS ASSOCIATION OF HISPANIC)
COUNTY JUDGES AND COUNTY)
COMMISSIONERS, HIDALGO COUNTY,)
AND MARIA LONGORIA BENAVIDES,)

Plaintiff-Intervenors,

v.

STATE OF TEXAS, JOHN STEEN, in his)
official capacity as Texas Secretary of State;)
and STEVE McCRAW, in his official capacity)
as Director of the Texas Department of Public)
Safety,)

Defendants.

CIVIL ACTION NO.

2:13-CV-193 (NGR)

[Lead case]

CIVIL ACTION NO.

2:13-CV-263 (NGR)

[Consolidated case]

TEXAS STATE CONFERENCE OF NAACP)
 BRANCHES; and the MEXICAN)
 AMERICAN LEGISLATIVE CAUCUS OF)
 THE TEXAS HOUSE OF)
 REPRESENTATIVES,)

Plaintiffs,)

v.)

JOHN STEEN, in his official capacity as)
 Secretary of State of Texas; and STEVE)
 McCRAW, in his official capacity as Director)
 of the Texas Department of Public Safety,)

Defendants.)

CIVIL ACTION NO.
 2:13-CV-291 (NGR)
 [Consolidated case]

BELINDA ORTIZ, LENARD TAYLOR,)
 EULALIO MENDEZ JR., LIONEL)
 ESTRADA; ESTELA GARCIA ESPINOSA,)
 LYDIA LARA, MARGARITO MARTINEZ)
 LARA, MAXIMINA MARTINEZ LARA, AND)
 LA UNION DEL PUEBLO ENTERO, INC.)

Plaintiffs,)

v.)

STATE OF TEXAS, JOHN STEEN, in his)
 official capacity as Texas Secretary of State;)
 and STEVE McCRAW, in his official capacity)
 as Director of the Texas Department of Public)
 Safety,)

Defendants.)

CIVIL ACTION NO.
 2:13-CV-348 (NGR)
 [Consolidated case]

**DEFENDANTS' STATEMENT TO THE COURT REGARDING THE
 PENDING UNITED STATES' MOTION FOR A PROTECTIVE ORDER
 FROM DEFENDANTS' RULE 30(B)(6) NOTICE OF DEPOSITION TO THE
UNITED STATES OF AMERICA**

Defendants have spent over a month attempting to confer in good faith with
 Plaintiff the United States of America as to the contents of Defendants' Rule
 30(b)(6) Notice of Deposition on the United States of America ("30(b)(6) Notice"),

attached hereto as Exhibit A.¹ The United States of America continues to refuse to produce a witness on any Topic in the 30(b)(6) Notice. In an effort to resolve these issues, and over the course of several telephone conversations with the United States of America, the Defendants have reduced their number of deposition Topics from 39 to 28. Defendants replaced 3 Topics (Topics 3, 4, and 9) with interrogatories. Defendants are also attempting to work towards stipulations with the United States of America which should eliminate the need for a Fed. R. Civ. P. 30(b)(6) deponent on 8 full Topics (Topics 31-36, and Topics 38-39) and 1 subpart of Topic 37.²

Of the remaining 28 Topics, Defendants have offered to significantly limit 5 of these Topics by the imposition of a date limitation. Only two subparts of Topic 37 remain unaltered. Those subparts and the other 22 remaining Topics all relate to the United States of America's, and, more specifically, the United States Department of Justice's, unique institutional knowledge of Election Crimes and Voter Fraud³ (the "Election Integrity Topics").

Defendants currently seek a deponent on the following Topics in the 30(b)(6) Notice, with proposed modifications (to which the United States has not agreed) in bold:

¹ Defendants corrected their 30(b)(6) Notice on April 18, 2014, two days after it was originally issued on April 16, 2014. The Corrected Notice of Rule 30(b)(6) Deposition, which is the version on which Defendants and the United States of America have been conferring, is attached as Exhibit A.

² Should the stipulation process fall through, Defendants reserve their rights to bring disputes relating to those Topics to the Court.

³ As defined in the attached 30(b)(6) Notice.

- Topic 1: Administrative Preclearance of the law of any state, territory or outlying possession of the United States, or the District of Columbia, **since 2004.**
- Topic 2: Enforcement of Section 2 of the Voting Rights Act **since 2004.**
- Topic 5: The use of Federal Observers or Examiners under the Voting Rights Act **since 2004.**
- Topic 6: Election monitoring under the Voting Rights Act **since 2004.**
- Topic 10: The Voting Section of the Civil Rights Division of the United States Department of Justice Complaint in-take phone logs and data, as well as the Interactive Case Management (ICM) system, including but not limited to, communications to and from vot1973c@usdoj.gov **since 2004.**
- Topics 7, 8, 11-30, and 37 (as Topic 37 relates to Voter Fraud and Election Crimes) (the “Election Integrity Topics”)

The Election Integrity Topics are all interrelated, and include:

- Topic 7: The Public Integrity Reports submitted to the Congress of the United States annually pursuant to the Ethics in Government Act of 1978, since 2004.
- Topic 8: The Ballot Access and Voting Integrity Initiative, which may also be known as the Ballot Integrity Initiative, for the 2002 general election and subsequent elections, implemented by the Public Integrity Section of the Criminal Division of the United States Department of Justice, in or around September 2002.
- Topic 11: Any instance of any Election Crime⁴ in Texas, from 2004 to the Present.

⁴ “Election Crime” is defined in the 30(b)(6) Notice as “an intentional act or willful failure to act, prohibited by state or federal law, that is designed to cause ineligible persons to participate in the election process; eligible persons to be excluded from the election process; ineligible votes to be cast in an election; eligible votes not to be cast or counted; or other interference with or invalidation of election results”, and includes “any criminal form of Voter Fraud [as defined *infra*, n. 5].” This definition is drawn directly from a Report by the U.S. Election Assistance Commission dated December 2006, entitled “Election Crimes: An Initial Review and Recommendations for Future Study,” at p. 13, available at http://www.eac.gov/assets/1/workflow_staging/Page/57.PDF (June 16, 2014) (the “2006 EAC Report”).

- Topic 12: Any prosecution for any Election Crime in Texas, from 2004 to the Present.
- Topic 13: Any potential prosecution for any Election Crime in Texas, from 2004 to the Present.
- Topic 14: Any investigation of any Election Crime in Texas, from 2004 to the Present.
- Topic 15: Any allegation ~~(substantiated or unsubstantiated)~~ of any Election Crime in Texas, from 2004 to the Present.
- Topic 16: Any instance of any Election Crime in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 17: Any prosecution for any Election Crime in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 18: Any potential prosecution for any Election Crime in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 19: Any investigation of any Election Crime in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 20: Any allegation ~~(substantiated or unsubstantiated)~~ of any Election Crime in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 21: Any instance of Voter Fraud⁵ in Texas, from 2004 to the Present.

⁵ “Voter Fraud” is defined in the 30(b)(6) Notice as “fraudulent or deceptive acts committed to influence the act of voting, and it includes both criminal and civil offenses and violations. “Voter Fraud” includes, but is not limited to, (1) making or knowingly possession a counterfeit of an official election ballot; (2) signing a name other than one’s own to a petition proposing an initiative, referendum, recall, or nomination of a candidate for office; (3) knowingly signing more than once for the proposition, question, or candidate in one election; (4) signing a petition proposing an initiative or referendum when the signer is not a qualified voter; (5) voting or attempting to vote in the name of another person; (6) voting or attempting to vote more than once during the same election; (7) intentionally making a false affidavit, swearing falsely, or falsely affirming under an oath required by statute regarding one’s voting status, including when registering to vote, requesting an absentee

- Topic 22: Any prosecution for Voter Fraud in Texas, from 2004 to the Present.
- Topic 23: Any potential prosecution for Voter Fraud in Texas, from 2004 to the Present.
- Topic 24: Any investigation of Voter Fraud in Texas, from 2004 to the Present.
- Topic 25: Any allegation ~~(substantiated or unsubstantiated)~~ of Voter Fraud in Texas, from 2004 to the Present.
- Topic 26: Any instance of Voter Fraud in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 27: Any prosecution for Voter Fraud in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 28: Any potential prosecution for Voter Fraud in any in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 29: Any investigation of Voter Fraud in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 30: Any allegation ~~(substantiated or unsubstantiated)~~ of Voter Fraud in any state, territory or outlying possession of the United States, or the District of Columbia, other than Texas, from 2004 to the Present.
- Topic 37: Any calculations, reports, audits, estimates, projections, or other analyses done by, commissioned by, or in the possession, custody, or control of, the United States of America, relating to the effect of SB

ballot or presenting to vote in person; (8) registering to vote without being entitled to register; (9) knowingly making a materially false statement on an application for voter registration or re-registration; (10) voting or attempting to vote in an election after being disqualified or when the person knows that he/she is not eligible to vote; and/or (11) knowingly soliciting or encouraging a person who is not qualified to vote in an election. This definition was put together from information contained in the 2006 EAC Report at pp. 13-14.

14 or any other law which requires photographic identification for voting, including but not limited to, calculations, reports, audits, estimates, projections, or other analyses done by or commissioned by, or in the possession, custody, or control of the United States of America, relating to the effect of SB 14 or any other law which contains a requirement to provide photographic identification for voting ~~(1) on minority voters or on voters who are members of a language minority group, from 2004 to the Present;~~ ⁽²⁾⁶ (1) on instances of Voter Fraud; and/or ~~(3)~~ (2) on instances of Election Crimes.

Defendants respectfully request the Court to deny the United States of America's Motion for a Protective Order as to the Topics 1, 2, 5, 6, 7, 8, 10, 11-30, and the above-identified portion of Topic 37, and order the United States of America to produce a deponent on those Topics. Defendants further respectfully request that the Court deny the remainder of the United States of America's Motion for a Protective Order as moot, pending resolution of the issues by the Defendants and the United States of America.

Dated: June 16, 2014

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JONATHAN F. MITCHELL
Solicitor General

⁶ The United States of America and Defendants are continuing negotiations to work out a stipulation as to the crossed-out language contained in Topic 37.

J. REED CLAY, JR.
Special Assistant and Senior Counsel
to the Attorney General
Southern District of Texas No. 1160600

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation
Southern District of Texas No. 10418
Texas State Bar No. 17901500
ATTORNEY-IN-CHARGE

G. DAVID WHITLEY
Assistant Deputy Attorney General
Southern District of Texas No. 2080496

STEPHEN RONALD KEISTER
Assistant Attorney General
Southern District of Texas No. 18580

JENNIFER MARIE ROSCETTI
Assistant Attorney General
Southern District of Texas No. 224780

/s/ Lindsey Elizabeth Wolf
LINDSEY ELIZABETH WOLF
Assistant Attorney General
Southern District of Texas No. 2292940

209 West 14th Street
P.O. Box 12548
Austin, Texas 70711-2548
(512) 475-0131

BEN A. DONNELL
Donnell, Abernethy & Kieschnick
555 N. Carancahua, Suite 1770
Corpus Christi, Texas 78401-0853
Southern District of Texas No. 5689

COUNSEL FOR THE STATE OF TEXAS, RICK
PERRY, JOHN STEEN, and STEVE MCCRAW

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, a true and correct copy of the foregoing document was served via the Court's ECF system to all counsel of record.

/s/ Lindsey Elizabeth Wolf
LINDSEY ELIZABETH WOLF